

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS RANGE, #190180,

Petitioner,

v.

CASE NO. 2:09-CV-10945

MARY BERGHUIS,

Respondent.

**ORDER DENYING PETITIONER'S APPLICATION
TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Michigan prisoner Edward D. Johnson ("Petitioner") filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his conviction for second-degree home invasion for which he was sentenced to 15 to 30 years imprisonment as a fourth habitual offender. He raised claims concerning the late addition of an expert witness, the conduct of the prosecutor, the identification procedures, the sufficiency of the evidence, the non-disclosure of evidence, the admission of arrest evidence, the accuracy of the trial transcripts, a delay in arraignment, and the effectiveness of trial and appellate counsel. On April 30, 2015, the court denied the petition and declined to issue a certificate of appealability. Petitioner filed a claim of appeal. The matter is now before the court on Petitioner's application to proceed *in forma pauperis* on appeal.

The standard for granting an application for leave to proceed *in forma pauperis* on appeal is a lower standard than the standard for granting a certificate of appealability. *Foster v. Ludwick*, 208 F. Supp. 2d 750, 764 (E.D. Mich. 2002). Whereas

a certificate of appealability may only be granted if petitioner makes a substantial showing of the denial of a constitutional right, a court may grant leave to proceed *in forma pauperis* if it finds that an appeal is being taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a); *Foster*, 208 F. Supp. 2d at 764-65. “Good faith” requires a showing that the issues raised are not frivolous; it does not require a showing of probable success on the merits. *Foster*, 208 F. Supp. 2d at 765. Having considered the matter, the court concludes that an appeal of the court’s decision would be frivolous and cannot be taken in good faith.

Accordingly,

IT IS ORDERED that Petitioner’s application to proceed *in forma pauperis* on appeal [Dkt. # 28] is DENIED.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 3, 2015

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, June 3, 2015, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522